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Committee on Relations with the Host Country

Letter dated 21 March 2002 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Chairman of the Committee on Relations with the Host Country

I have the honour to transmit to you herewith a memorandum (see annex) concerning the problem posed by the tax demands made by the City of New York authorities with respect to the Mission's building located at 309 East 48th Street in Manhattan, New York City.

The Permanent Mission of the Libyan Arab Jamahiriya requests the Committee on Relations with the Host Country to hold a meeting to discuss the memorandum and remedy the situation created by these demands, which have no legal or logical basis, in keeping with the obligations of the host country under the Charter of the United Nations, the Vienna Convention on Diplomatic Relations and the Headquarters Agreement concluded by the Government of the United States of America, as the host country, and the United Nations.

I further have the honour to request you to have the memorandum circulated as a document of the Committee.

(*Signed*) Abuzed Omar **Dorda**
Permanent Representative

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Annex to the letter dated 21 March 2002 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Chairman of the Committee

Memorandum for submission to the Committee on Relations with the Host Country concerning illegal demands for real estate taxes on the building of the Permanent Mission of the Libyan Arab Jamahiriya in New York

On 7 and 8 January 1986, former President Ronald Reagan issued two Executive Orders blocking all Libyan assets in the United States as part of a series of unilateral sanctions imposed on Libya. The Libyan Arab Jamahiriya owned a building known as Libya House, which is a structure of 24 floors located at 309 East 48th Street in Manhattan. It is occupied by the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations, and part of it also serves as the residence of the Jamahiriya's Permanent Representative. Under prior legal arrangements and with the approval of the competent United States authorities, part of the building, namely seven of the floors, was designated for commercial purposes. However, under the aforesaid Executive Orders, which prohibited any Libyan investment activity in the United States, it became legally impossible to use the seven floors in question for the purpose originally intended.

Under arrangements instituted by the United States authorities, the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury became responsible for the blocked Libyan assets in the United States. Libya applied for a licence to rent out the seven floors, and a copy of an application for such a licence is attached (see appendix I).* It should be noted that, in its application, Libya agreed to deposit any amounts remaining after the payment of all costs in a blocked account. OFAC nevertheless rejected the application (see appendix II).

Although the United States authorities had prevented Libya from using the seven floors in the building as investment property, the New York City authorities adopted an attitude that was bizarre in the extreme. They insisted on treating the seven floors whose beneficial use had been blocked, as previously explained, like any other commercial property that was not subject to any restrictions. Despite the fact that the floors remained unoccupied and were not used for commercial purposes of any kind, and although no income was produced in the years following the issuance of the two blocking orders mentioned above, the New York City authorities continued to assess real estate taxes on them throughout the period in question and to demand enormous sums in accumulated interest. They have continued up to the present time to insist on this position, which has no basis in law or logic, and, according to the latest official notice sent to the Mission by the New York City authorities, the delinquent taxes and accumulated interest charges amount to $40,411,664.14 (see appendix III).

It should be said that, in its concern to comply with the applicable laws, the Mission paid the real estate taxes assessed on the seven floors designated as investment property over the entire period prior to the blocking orders, despite the fact that they were not actually used as such.

* For the appendices, see the addendum to the present document (A/AC.154/346/Add.1).

In a letter dated 18 December 1987 addressed to the legal representative of the Mission, Mr. Abraham Biderman, who was at that time New York City Commissioner of Finance, stated as follows:

"Subdivision (e) of section 11-208.1 defines income producing property as 'property owned for the purpose of securing an income from the property itself'. The Presidential Order prohibiting leasing of the office space, cited in your letter, precludes consideration of the subject property as an income producing property." (see appendix IV)

In a letter dated 14 August 1986 addressed to the New York City Tax Commission, the legal representative of the Mission stated that it would seem to be illegal for the City to assess taxes on part of the building that had not been used for commercial purposes because of a prohibition issued by the federal Government, and he asked that the Mission's just request should be given immediate attention (see appendix V).

Although the Commission's reply, in its letter dated 28 August 1986, acknowledged the facts that prevented the Mission from renting out the seven floors, it gave the pretext that the provisions of the law do not permit an exemption and thence concluded that the request must be rejected (see appendix VI).

The Mission further addressed a note verbale dated 12 September 1986 to Mr. Javier Pérez de Cuéllar, then Secretary-General of the United Nations, requesting his assistance in resolving this problem (see appendix VII).

On 19 August 1991, Mr. Paul O'Dwyer, then New York City Commissioner for the United Nations and Consular Corps, wrote to Mr. Shirin Tahir-Kheli, Alternate Representative for Special Political Affairs at the United States Mission, concerning the outstanding real estate taxes on the Libya House building, which at that time amounted to only 3.5 million dollars. He wrote as follows:

"... Since seven floors of the subject premises have been set aside for commercial use, they have been taxed in the ordinary course. Although none of the seven floors had ever been occupied by a tenant, the Libyan government had been paying the taxes until early 1986, when their ability to rent the seven floors was 'frozen', pursuant to two Executive Orders. The Libyan government has maintained since that time that it is inappropriate, indeed illegal, for the City to be taxing the property when the property has been rendered 'unusable' for the commercial purposes for which it was built.

"...

"... We believe that this burden should not fall on the citizens and taxpayers of the City, but rather it is the responsibility of the federal government in light of the Executive Orders which triggered the problem." (see appendix VIII)

This letter, with the view it conveys, clearly supports the assertion that the attitude adopted towards Libya in this matter is unjust.

The City of New York has not been content to demand only the real estate taxes for the floors in question. Although Commissioner Biderman acknowledges that the Executive Order "precludes consideration of the subject property as an income producing property" and Commissioner O'Dwyer endorses Libya's position that "it is inappropriate, indeed illegal, for the City to be taxing the property when

the property has been rendered 'unusable' for the commercial purposes for which it was built", the City goes on to impose punitive interest charges at an annual rate of 18 per cent compounded daily. The interest charges have actually exceeded the amount of the taxes themselves in a manner that goes beyond all reasonable bounds.

On 27 August 2001, Mr. Bryan X. Grimaldi, General Counsel to the New York City Commission for the United Nations, addressed a letter to Mr. Isa Ayad Babaa, Deputy Permanent Representative of the Libyan Arab Jamahiriya, concerning the tax arrears, in which he informed the Libyan Mission that " ... the City of New York formally registered a claim with the Office of Foreign Assets Control, U. S. Department of Treasury", for the tax amounts outstanding, namely, as it says in the letter, $36,508,846.70, representing the total amount of taxes and interest due (see appendix IX).

On 20 September 2001 the Mission replied with a letter in which, inter alia, it made the formal request that the City Department of Finance should withdraw this demand at once. As of this date, the Mission has received no reply to this request.

In the context of the Mission's tireless efforts to find a legal solution to this problem, on 4 April 2001 it addressed a note to the Permanent Mission of the United States to the United Nations asking permission "to use the entire premises for Mission purposes" (including the seven floors in question) (see appendix X). The grounds for this request were logical, and it had the goal of settling the disputed question of the continued assessment of taxes. It made no sense to maintain the commercial character of the seven floors while their owner was prohibited from using them for commercial purposes and was then required, by another entity, to pay taxes on revenues that did not exist for reasons over which it has no control. The Mission received formal approval of this request by a note dated 5 December 2001 from the Permanent Mission of the United States to the United Nations (see appendix XI). Accordingly, the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed a letter to Ms. Irene Halligan, New York City Commissioner for the United Nations, Consular Corps and Protocol, on 21 December 2001, concerning the Mission's intention to give effect to this approval by converting the seven commercial floors for the Mission's diplomatic uses, and it requested a meeting of the Permanent Representative, the City Commissioner and the Mission's legal adviser and attorney to discuss how the Mission should proceed in completing the necessary formalities (see appendix XII).

Apparently for reasons connected with changes of senior executive and administrative personnel in the City following the election of a new mayor, the Mission received no reply to this request. This prompted us to write once more as a reminder, and recently the Mission was happy to receive a reply to the effect that the new Commissioner, Ms. Marjorie B. Tiven, wished to resolve the matter and was willing for the meeting to be held (see appendix XIII).

However, to its astonishment at an action that not only negates the readiness of both parties to reach a solution to the problem but violates all diplomatic custom and the obligations of the host country to respect the immunity of the premises of diplomatic missions in accordance with the Vienna Convention on Diplomatic Relations and the Headquarters Agreement, the Mission received a letter dated 12 March 2002 from the City of New York (see appendix XIV) notifying it of the City's intention to offer the tax liens for sale and to publish a notice to that effect in the New York *Daily News*. This action constitutes a manifest breach of the obligations

of the host country under the terms of the Charter of the United Nations, the 1961 Vienna Convention on Diplomatic Relations and the Headquarters Agreement concluded by the United Nations and the Government of the United States of America.

It is well known that the privileges and immunities of missions to the United Nations are regulated by numerous international instruments. They include the Charter of the United Nations, specifically Article 105, paragraph 2; the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 and ratified by the United States on 15 April 1970; the Vienna Convention on Diplomatic Relations, signed on 18 April 1961, which entered into force on 24 April 1964 and was ratified by the United States on 8 November 1972; and the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed on 26 June 1947 (the Headquarters Agreement).

Article 105, paragraph 2, of the Charter reads:

> "2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization."

The Charter thus concedes the necessity of according privileges and immunities to permanent representatives and entrusts to the General Assembly the task of determining the details of such privileges and immunities by making recommendations or proposing conventions to the Members of the United Nations for this purpose (Article 105, paragraph 3, of the Charter).

The privileges and immunities of the representatives of Members are regulated by article IV of the Convention on the Privileges and Immunities of the United Nations, which grants the representatives of Members an appreciable number of privileges and immunities while exercising their functions, including immunity from arrest; inviolability for all papers and documents; exemption from immigration restrictions; and such other privileges and immunities not inconsistent with the foregoing as diplomatic envoys enjoy.

Article 21 of the Vienna Convention on Diplomatic Relations, on the premises of diplomatic missions, reads:

> "1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.
>
> "2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members."

Article 25 of the Convention also provides that:

> "The receiving State shall accord full facilities for the performance of the functions of the mission."

The Vienna Convention on Diplomatic Relations supports the assertion that the receiving State must not impose unreasonable restrictions on premises. This is because the imposition of unreasonable restrictions would not accord with the

general rule of freedom of movement or with the spirit of the provisions requiring the receiving State to assist missions in obtaining suitable accommodation and not to impede this process.

Under the Headquarters Agreement between the United Nations and the Government of the United States, the latter grants full diplomatic privileges and immunities to principal resident representatives, who:

> "... shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, ..., as it accords to diplomatic envoys accredited to it." (section 15)

Furthermore, as noted above, the Headquarters Agreement states specifically that principal permanent representatives are entitled to the same privileges and immunities as diplomatic envoys accredited to the United States.

In bringing this matter before the Committee on Relations with the Host Country, the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations demands that the host country should comply, as it has undertaken to do in that capacity, with the provisions of international law as codified in the international instruments cited above and that it should take immediate measures to halt the sale by the New York City authorities of the so-called delinquent taxes and charges (which are absolutely illegal), as announced by their notice of 12 March 2002. Instead of turning a blind eye to the actions of the New York City authorities over the years, as exemplified by their illegal demands for the payment of commercial real estate taxes on property that the host country Government has prevented from being used for the purpose intended by means of the orders it has enacted, it should meet its responsibilities as host country of the Organization and should correct actions that are in violation of the most elementary norms of law and justice.

For more than 15 years, the Mission has been deprived of investment income on the commercial portion of the building despite the original approval by the United States authorities of its use for commercial purposes. These revenues would in any event have been not less than 10 times the amount of the real estate taxes wrongly assessed on the building. Despite the many initiatives showing the Mission's good faith and its desire to find a just and fair solution to a problem of long standing, the means of resolving that problem have been complicated by the baffling attitude the New York City authorities have insisted on adopting. By their silence, the relevant authorities at the federal level implicitly agree with them in this. The Mission reserves its right to claim compensation for the losses sustained in the manner it deems appropriate.

The Permanent Mission of the Libyan Arab Jamahiriya to the United Nations requests the Committee on Relations with the Host Country to exercise the powers entrusted to it under General Assembly resolution 2819 (XXVI), which establishes the Committee's terms of reference. In May 1992 and March 1994 , the Committee adopted a detailed list of topics for its consideration, and items 2, 3 and 5 of that list relate in particular to the crux of the problem under consideration (see appendix XV). The Mission expects the Committee, in accordance with its terms of reference, to intervene with a view to devising a definitive solution to the problem of the tax demands on the Mission's building that may once again place matters on a footing that accords with the norms of international law and established principles as they

relate to the obligations of the host country vis-à-vis the privileges and immunities of diplomatic missions and their premises.

In closing, the Mission affirms that Libya has always met and will continue to meet all of the financial obligations incurred in connection with the services provided by the City of New York to Libya House. We ask no more than that an unjust situation that lacks any legal or logical basis should be handled in a fair and rational manner.